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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,601	05/04/2006	Bernard Pierre Dominique Carcy	I-2003.005 US	8856
31846 7590 08/27/2009 Intervet/Schering-Plough Animal Health Patent Dept. K-6-1, 1990 2000 Galloping Hill Road Kenilworth, NJ 07033-0530			EXAMINER ARCHIE, NINA	
			ART UNIT 1645	PAPER NUMBER
			NOTIFICATION DATE 08/27/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**ADVISORY ACTION**

1. The amendment filed on 7/16/2009, in reply to the final rejection has been considered and will be entered but is not deemed to place the application in condition for allowance. Applicant's remarks have been entered. Claims 1-2, 4-5, 7-15, 19-21 are pending and under examination. Claim 11 has been amended. Claims 3, 6, and 16-18 are cancelled.

***Rejections Maintained***

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. The rejection of claims 11-15 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement is maintained for the reasons set forth in the previous office action. The claim(s) contain subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

**Applicant arguments:**

Applicants arguments filed in response to the 35 U.S.C. 112, first paragraph, July 16, 2009 is carefully considered, but not found to be persuasive for the reasons below.

Applicants argue that it is respectfully submitted that the present amendment to claim 11, which clarifies that the claimed vaccine provides protection against *Babesia canis*, overcomes this objection.

**Examiner's Response to Applicant's Arguments:**

In response to applicant's statement as set forth supra, the rejection is maintained for the reasons set forth in the previous office action on 4/16/2009. Moreover an isolated amino acid sequence in amino acids 17 to 233 of SEQ ID NO: 2 or an isolated amino acid sequence in amino acids 17 to 180 of SEQ ID NO: 2 comprises a fragment which have different possibilities

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of changes to the amino acid. The specification provides no disclosure of how any isolated amino acid or an antibody against any isolated amino acid, may be used as a vaccine because it fails to provide guidance whether this variant has the ability to induce a protective immune response or to bind to antisera from infected animal nor does the specification disclose a protective response against any subject. Therefore the rejection maintained.

### *Conclusions*

3. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina A. Archie whose telephone number is 571-272-9938. The examiner can normally be reached on Monday-Friday 8:30-5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner supervisor, Robert Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert B Mondesi/  
Supervisory Patent Examiner,  
Art Unit 1645

Nina A Archie  
Examiner  
GAU 1645  
REM 3B31